

Perfection of security interests
Mobile home

Roost v. Green Tree Financial Servicing Corp. 98-6028-fra
In re Stoerck 696-65911-fra7

11/25/98 FRA Published

Debtors purchased a mobile home, lot, and improvements from Woodland Sales Co., naming Woodland as beneficiary of a deed of trust covering all the property. At the time the Debtors took possession of the property, the mobile home had been placed on the lot, the wheels removed, a garage attached, and utilities connected. At the closing date of the sale, Woodland assigned the beneficial interest to the Defendant Green Tree.

The Manufacturer's Certificate of Origin (MCO) was prepared by the manufacturer and delivered to Woodland which in turn delivered it to Ford Consumer Finance Co. (FCFC) pursuant to a standing inventory financing agreement. Prior to the closing of escrow, the escrow agent obtained from FCFC a statement of the amount required to release its interest in the unit being sold. On the closing date of October 24, 1996, the escrow agent sent the payoff amount to FCFC by mail conditional upon FCFC returning the MCO. FCFC returned the MCO and a release of its interest in the property on January 27, 1997. The escrow agent then obtained the necessary signatures on an application to exempt the mobile home from registration and titling and delivered it and the MCO to the DMV on June 17, 1997. The application was approved on July 15 and returned to the escrow agent who caused the application to be recorded in the real property records of Lane County on July 21, 1997. Debtors filed bankruptcy under Chapter 7 on November 18, 1996.

The Trustee filed this action, arguing that under Oregon law, the only way to perfect a security interest in a mobile home is by notation on the Certificate of Title by DMV. At the petition date, therefore, Green Tree's security interest in the mobile home was unperfected and avoidable by the Trustee. When the application for exemption from titling and registration was approved and recorded, the mobile home became subject to the real property laws and was then covered by the pre-petition deed of trust. Perfection, however, did not occur until approximately eight months post-petition and was either void as a violation of the automatic stay or avoidable as a preferential transfer.

The court agreed with the Trustee. Unless and until an application from registration and titling is approved by DMV, the only way to perfect a security interest in a mobile home under Oregon law is by notation on the certificate of title. Perfection of Green Tree's security interest occurred post-petition (and not within the period when perfection may relate back to the date of transfer) and was thus void under the automatic stay. Green Tree's security interest was unperfected at the petition date and avoidable

1 by the Trustee under the Trustee's strong-arm powers. Judgment to
2 the Trustee.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case No.
)	696-65911-fra7
JACK H. STOERCK and)	
JANICE M. STOERCK,)	
)	
_____ Debtors.)	
)	
ERIC R.-T. ROOST, Trustee,)	
)	
Plaintiff,)	
vs.)	Adversary Proceeding No.
)	98-6028-fra
GREEN TREE FINANCIAL SERVICING)	
CORPORATION,)	
)	MEMORANDUM OPINION
_____ Defendant.))	

I. INTRODUCTION

The Debtors purchased a manufactured home, and the real property on which to place it, from Woodland Sales Company. The sale was financed by Defendant Green Tree Financial Servicing Corporation, which acquired a security interest in the land, manufactured home, and appurtenant structures. The Trustee now seeks to avoid the security interest in the manufactured home on the grounds that the security interest was not perfected at the time the

1 petition for relief was filed. The matter was tried largely on
2 stipulated facts set out in the pre-trial order, with additional
3 testimony at a short trial on November 10, 1998.

4 Given the facts of the case and applicable Oregon law, I find
5 for the Trustee.

6 II. NATURE OF PROCEEDING

7 This action is brought by the Trustee pursuant to 11 U.S.C.
8 §§ 547, 549 and 550. This Court has jurisdiction pursuant to 28
9 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. §
10 157(b) (2) (F) .

11 III. FACTS

12 On or about July 31, 1996 Debtors Jack and Janice Stoerck
13 contracted to purchase from Woodland Sales Company ("Woodland") a
14 1996 Fuqua manufactured home, the lot on which it was situated in
15 Florence, Oregon, and certain improvements to be made on the lot and
16 manufactured home. By the time of the sale the manufactured home
17 had been placed on the lot, the wheels removed, a garage attached,
18 and utilities connected.

19 The sale price of the property was \$97,000. Of this amount
20 \$52,000 was allocated by the seller to the manufactured home. (The
21 record is unclear as to whether the Debtors were aware of, much less
22 acquiesced in, that allocation.) Debtors paid \$20,000 down, and
23 borrowed the difference from Woodland. Woodland, with Debtors'
24 consent, assigned the loan to Defendant Green Tree Financial
25 Servicing Corporation ("Green Tree").
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1 The sale was closed in escrow on October 24, 1996. Debtors
2 executed and tendered to the escrow a deed of trust naming Woodland
3 as beneficiary. The trust deed described, and purported to include,
4 the lot, improvements, and the manufactured home. It was recorded
5 on October 24, 1996 in the appropriate records in Lane County.

6 Recorded as the next document in sequence was an assignment of the
7 beneficial interest under the trust deed by Woodland to Green Tree.

8 The manufactured structure was originally constructed in June
9 1995, and then sold by the manufacturer to Woodland. A
10 Manufacturer's Certificate of Origin ("MCO") was prepared by the
11 manufacturer at that time, and delivered to Woodland. The MCO was
12 then delivered by Woodland to Ford Consumer Finance Company ("FCFC")
13 pursuant to a standing inventory financing agreement between
14 Woodland and FCFC.¹

15 Prior to the closing of escrow, the escrow agent obtained
16 from FCFC a statement of the amount FCFC required to release its
17 interest in the unit being sold. On the closing date, the escrow
18 agent sent the payoff amount to FCFC by mail, with a cover letter
19 advising that the funds were tendered on the condition that FCFC
20 return the Manufacturer's Certificate of Origin. As will be shown,
21 obtaining the MCO was a necessary step in ultimately completing the
22 transaction.

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25 ¹The record is not absolutely clear on this point: it may be
26 that the MCO was delivered by the manufacturer directly to FCFC.
However, it is not disputed that FCFC held the MCO with Woodland's
consent.

1 FCFC returned the MCO, and a request for reconveyance
2 authorizing the release of its interest in the real property, on or
3 about January 27, 1997. Thereafter the escrow agent secured the
4 necessary signatures on an application to exempt the manufactured
5 structure from registration and titling. The Application and the
6 MCO were delivered by the escrow to the Oregon Department of
7 Transportation, Driver and Motor Vehicles Services Division (DMV) on
8 June 17, 1997. The application for exemption was approved on July
9 15 and returned to the escrow agent, which caused the application to
10 be recorded in the real property records of Lane County on July 21,
11 1997.

12 Debtors filed their petition for relief under Chapter 7 of
13 the Bankruptcy Code on November 18, 1996.

14 IV. ANALYSIS

15 A. Trustee's avoiding powers.

16 The parties do not dispute that the Defendant has a valid and
17 perfected security interest in the land and improvements other than
18 the manufactured home. The Trustee's avoidance action with respect
19 to the manufactured home is based on the understanding that the
20 transfer relating to the manufactured home did not occur until July
21 21, 1997 when the approved application for DMV exemption was
22 recorded. The Trustee asserts two grounds for avoiding the security
23 interest in the manufactured home. The first is that, since
24 perfection of a security interest constitutes a transfer under
25 bankruptcy law, In re Grand Chevrolet, Inc., 25 F.3d 728, 731 (9th
26 Cir. 1994), the perfection in this case occurred after the filing of

1 the bankruptcy petition, and without Court authority. It is
2 therefore voidable under Code § 549. Moreover, the Trustee asserts,
3 the transfer was on account of an antecedent debt, since it operated
4 to perfect a security interest attributable to a debt incurred
5 nearly ten months earlier and is therefore an avoidable preference.
6 11 U.S.C. § 547.

7 Defendant asserts that its security interest in all of the
8 property sold was duly perfected at the time the sale closed, by
9 recording the trust deed describing the land and the manufactured
10 home. The matter thus turns on what Oregon law requires for
11 perfection of a security interest in the manufactured home.

12 B. Defendant's security interest in manufactured home is
13 unperfected.

14 Consideration of this issue requires a review of Oregon's
15 convoluted statutory scheme regarding title to and security
16 interests in manufactured homes. Convoluted is not the same as
17 "ambiguous" and it is clear that perfection of a security interest
18 in a "titled" manufactured structure must be accomplished by
19 notation on the certificate of title. Recording a trust deed
20 describing the structure is insufficient unless the structure has
21 been exempted from the title statutes.

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1 It should be noted to begin with that the statutory term for
2 the structure at issue here is "manufactured structure." ORS
3 801.333(1) (a).²

4 ORS 820.500 provides, in pertinent part:

5 Manufactured structures are subject to the same
6 provisions concerning registration, titling, salvage
7 title, sale by dealers, transfers, transfers of
8 interests and payment of fees as required for any
other vehicle required to be registered under the
Vehicle Code. The following provisions apply to
manufactured structures:

* * *

9 (3) The Department shall not issue title or register a
10 new manufactured structure without presentation of
information from the manufacturer containing the year
11 of manufacture, the make and the manufacturer's
vehicle identification number. The manufacturer of a
12 manufactured structure shall issue with each
manufactured structure to be sold in this State, the
13 information required by this subsection in a form
determined by the Department by rule.

14 ORS 803.097 provides that:

15 The exclusive means for perfecting a security interest
16 in a vehicle is by application for notation of the
security interest on the title in accordance with this
17 section.

18 An exception is made for vehicles held by dealers in their
19 inventories.

20 Defendant's and the amicus argument suggest that ORS 820.500
21 does not include attachment or perfection of security interests.
22 Granted, it is generally held that the mention of one or more things
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24 ²ORS 801.333(1) (a) defines "manufactured structure" as, among
25 other things, "a manufactured dwelling that is more than eight and
26 one-half feet wide." The MCO and other sale documents presented to
the Court establish that the property in question meets this
description.

1 in a statute implies the exclusion of all others. See, e.g.,
2 Jeldness v. Pearce, 30 F.3d 1220 (9th Cir. 1994). However, the rule
3 is one of construction, not of law, and must be carefully applied.
4 Cabell v. City of Cottage Grove, 170 Or. 256, 130 P.2d 1013 (1943).
5 Courts must construe statutes in context, and consistently with the
6 overall statutory scheme. The legislature created a comprehensive
7 scheme for the registration, titling, and transfer of motor
8 vehicles. It also provided that manufactured structures be subject
9 to the same regime in virtually every respect. There is no reason
10 to suppose that the legislature intended to exclude an essential
11 aspect of the scheme - the attachment and perfection of security
12 interests - and make it subject to an altogether different set of
13 rules. In nearly all other cases, ownership and security interests
14 are registered in the same manner. For example, all interests in
15 real property are recorded at county recorders' offices; all
16 interests in motor vehicles are noted on certificates of title. I
17 believe the legislature intended to be consistent in its treatment
18 of manufactured structures, and to provide that ownership and
19 security interests be monumented and perfected in the same manner.
20 This view renders ORS 820.500 consistent with 821.510, which makes
21 real property law applicable only *after* a manufactured structure is
22 exempted from title and registration statutes.

23 Accordingly, I hold that ORS 820.500 makes the attachment and
24 perfection of security interests under ORS 803.097 applicable to
25 manufactured structures. As long as a manufactured structure is
26 subject to the issuance of a certificate of title, the exclusive

1 means of perfecting a security interest in it is by notation on the
2 certificate.

3 The Motor Vehicle Code does provide for treatment of a
4 manufactured structure as real property, should the owner so elect.
5 Under ORS 820.510 the owner of a manufactured structure that is
6 located on land to which the owner has record title may obtain an
7 exemption from the requirement to register and title the structure
8 under the Vehicle Code. Exemption requires surrender either of the
9 certificate of title and registration, if those have been issued, or
10 the Manufacturer's Certificate of Origin. (Note that delivery of
11 the Certificate to the DMV is also a prerequisite to the issuance of
12 a certificate of title.) ORS 820.510(2) provides:

13 (2) If an exemption is obtained for a manufactured
14 structure under this section, the following apply:

15 (a) except as otherwise provided in this section or
16 by the rules of the Department, a manufactured
17 structure, upon obtaining the exemption under this
section, shall become subject to the same provisions
of law in this state that would apply to any other
building, housing or structure on the land. [Emphasis
added].

18 The legislature has, in the foregoing provision, drawn a
19 bright line: until and unless exemption from registration is allowed
20 by the DMV, a property interest, whether ownership or security, in a
21 manufactured structure is documented by a certificate of title
22 issued by the Department. A security interest in a manufactured
23 structure must be perfected by notation on the certificate of title.
24 Oregon real property law regarding the attachment of fixtures to
25 real property does not come into play until the exemption is
26 approved. In this case, that means that Green Tree's security

1 interest was not perfected at the time the petition for relief was
2 filed by the Debtors. To the extent that the application for
3 exemption and its allowance accomplish perfection (because of the
4 previously recorded trust deed), the perfection occurred
5 postpetition and in derogation of the automatic stay, 11 U.S.C. §
6 362(a), and is therefore void.

7 Testimony was provided at trial that the closing escrow was
8 conducted in a manner now customary in Oregon. Flooring financiers
9 such as FCFC generally insist on retaining the MCO until they are
10 paid. The statutory provenance of the MCO is that it is the
11 statement of information described in ORS 820.500(3). However,
12 since delivery of the statement is a prerequisite to obtaining
13 title, lenders have employed it as a sort of certificate of title in
14 its own right. These creditors retain the MCO as a means of
15 insuring payment as the borrower/dealer makes sales. When asked at
16 trial why the lender should not simply rely on its perfected
17 security interest in the inventory, counsel for Defendant suggested,
18 no doubt correctly, that the reason is that retention of the MCO
19 provides protection against sale by the dealer to a bona fide
20 purchaser, which would take free of the inventory security interest.
21 See ORS 79.3070.

22 Defendant and Amicus Oregon Land Title Association argue that
23 strict construction of the statute would have an adverse effect on
24 the manufactured home market, since it would be difficult or
25 impossible to acquire MCOs from flooring financiers prior to closure
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1 of the sale. However, Defendant concedes that it is not impossible
2 to proceed in this manner.

3 The statute is clear and unambiguous: Oregon law requires
4 that courts construing Oregon law look to the plain language of the
5 statute, since the text of the statutory provision is "the starting
6 point for interpretation and is the best evidence of the
7 legislature's intent." PGE v. Bureau of Labor and Industries, 317
8 Or. 606, 859 P.2d 1143 (1993), Davis v. Campbell, 327 Or. 584, __
9 P.2 __, (1998).

10 Given the clear statutory scheme, it is not the place of a
11 court - especially a federal court - to consider policy arguments as
12 to how state law may be improved. These are questions which must be
13 addressed to the Oregon legislature. It is argued that ORS
14 820.510(2)(c) somehow excepts manufactured homes from the statutory
15 scheme once they have been affixed to real estate. The provision
16 states that the exemption process does not affect "any lien or
17 security interest in a manufactured structure that is exempted under
18 this section if the security interest or lien attaches before the
19 exemption is obtained." Defendant's interpretation of this statute
20 puts it squarely in conflict with ORS 820.510(2)(a), which clearly
21 states that Real Property Doctrine is inapplicable until the
22 exemption is obtained. Statutes should be construed as to be
23 internally consistent. Chevron USA, Inc. v. Motor Vehicles Div., 49
24 Or.App. 1099, 1103, 621 P.2d 668, 670 (1980). The consistent
25 interpretation of ORS 820.510(2)(c) is that exemption of the
26 property does not disturb a security interest previously attached

1 and perfected by notation on the now superfluous certificate of
2 title.

3 The amicus brief further argues that the Defendant's security
4 interest was perfected at the time the escrow closed, because the
5 secured party had completed the steps necessary to perfect its
6 interest, citing to Fidelity Financial Services, Inc. v. Fink, 118
7 S.Ct. 651 (1998). However, Defendant here failed to do all that was
8 necessary when it failed to require escrow instructions which in
9 turn required the flooring financier to tender the MCO into escrow.
10 As noted above, there is no reason this could not have been done,
11 other than the practice of flooring financiers to withhold the
12 certificate until payment is received outside of escrow. A party is
13 not relieved of the duty to take certain steps to perfect its
14 security interest simply because another party declines to
15 cooperate.

16 The Defendant raises two additional affirmative defenses.
17 First, Defendant claims that the flooring financier held the MCO in
18 constructive trust for the benefit of Defendant once it was paid.
19 There are two flaws in this argument. First, notwithstanding the
20 practical effect of withholding delivery, the MCO is not an
21 instrument of title. It follows that, as far as perfecting a
22 security interest is concerned, mere possession of the MCO is of no
23 significance. Even if the flooring financier can be said to hold the
24 MCO in trust for Green Tree, it is not possession or delivery of the
25 document which perfects title, but notation of the security interest
26 on a certificate of title. The fact that the MCO must be delivered

1 as part of the process of applying for a certificate of title does
2 not make possession the equivalent of perfection, any more than
3 executing, but not delivering the application would.

4 Defendant also asserts that it is subrogated to FCFC's
5 position as a secured creditor. Equitable subrogation occurs when
6 one party has paid the debt of another. However, stepping into
7 FCFC's shoes would not be sufficient to acquire a perfected security
8 interest in the particular unit, since it was no longer part of
9 anyone's inventory, and perfection by notation on the title was
10 therefore required.

11 V. CONCLUSION

12 Until and unless a manufactured structure is exempted from
13 title and registration requirements under the Motor Vehicle Code,
14 the sole means of perfecting a security interest therein is by
15 notation on the certificate of title. At the time the petition for
16 relief was filed there had been neither an application for exemption
17 nor a notation on the title. It follows that the Defendant's
18 security interest in the manufactured structure was unperfected at
19 the time of the petition, and subject to avoidance by the Trustee.
20 Judgment must be entered for Plaintiff.

21 The foregoing constitutes the Court's finding of fact and
22 conclusions of law, which will not be separately stated. Counsel
23 for the Trustee shall submit a form of judgment consistent with the
24 foregoing.

25 FRANK R. ALLEY, III
Bankruptcy Judge

26 cc: Trish Brown, Eric Roost, Joseph VanLeuven, Gavin Armstrong

1 cc: Ms. Trish Brown
Mr. Eric Roost
2 Mr. Joseph VanLeuven
Mr. Gavin Armstrong
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